IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.84l6 of 2005

Ms Mangal B Kadam and anr.. Petitioners

vs

Ms Parubai K Asabe and anr...Respodents

Mr Prakash Mahadik for petitioners

CORAM: S.U.KAMDAR J.

Dated 13.l2.2005

P.C:

. The impugned order is challenged only on the ground that the legal heirs of the plaintiff who has himself sought to be brought on record has not obtained letter of administration on the basis of the Will not being probated will in his possession. In view of the judgment of the division bench of this court in the case of Ramniklal Amrutlal Shah vs Bhupendra Impex Pvt Ltd and ors, 200l(2) Bombay Cases Reporter, 479 it is well settled that such a person can maintain the suit on the basis of the will. However no decree can be passed in his

favour unless will is probated . In that light of the matter there is no infirmity in the order passed by the trial court. Save and except it is clarified that even if the application is allowed and applicant is added as party defendant to the suit in place of the deceased plaintiff he will not be entitled to to a decree unless he obtains probate from the competent court of jurisdiction. In that light of the matter petition is disposed of accordingly with no order as to costs.